The unsoundness of this part of the argument is apparent from the wording of the bill. The work which the solicitors have done is clearly specified as advising on a proposed debenture and then drawing it. There is no mention of investigation of title for the best of all possible reasons. None was done. The word "charge" does not occur, still less the word "chargee". This work is assessable under Schedule IV and the appeal must be allowed.

Appeal allowed.

OOI PHEE CHENG v. KOK YOON SAN.

[Orig. Civ. Juris. (Taylor, J.) May 26, 1950]

[Kuala Lumpur — Civil Suit No. 199 of 1949]

Contract — Loan of money during Japanese occupation expressed to be payable in "British or Allied Currency" — Admissibility of evidence to explain meaning of words — Evidence Ordinance, s. 98 — Debtor and Creditor (Occupation Period) Ordinance, 1948.

In this case it appeared that during the Japanese occupation one Lee Tuck Onn (since deceased) borrowed money from the plaintiff and signed I.O.U.s wherein he agreed to repay "in British or Allied Currency". The plaintiff brought an action against the executor of Lee Tuck Onn (deceased) to claim payment of the moneys lent.

Held, (1) that evidence was admissible under section 98 of the Evidence Ordinance to explain the meaning of the words used; (2) that on the facts the agreement in this case was to pay the money in the equivalent of the British or Allied Currency in use after the liberation and therefore there ought to be an enquiry to ascertain the amount repayable.

Case referred to:—

(1) *Scammell v. Ouston* (1941) A.C. at pp. 268 and 269.

CIVIL SUIT.

H. E. P. Powell for the plaintiff.

S. N. Veerasamy and *H. T. Ong* for the defendant.

Cur. Adv. Vult.

Taylor, J. : — This case is somewhat anomalous.

The plaintiff is a printer and stationer and the defendant is the executor of one Lee Tuck Onn, a man of considerable independent means who developed leprosy and entered the Leper Settlement at Sungei Buloh for treatment sometime before the Japanese invasion. At first Lee was able to receive substantial sums from the income of his property but as the enemy occupation dragged on these remittances dried up. Sometime about the end of 1944 Lee became connected with the Anti-Japanese Resistance Movement and lived in the jungle near Sungei Buloh but he continued to come into the Settlement, unostentatiously, to receive medical treatment. He was on friendly terms with Dr. Che Lah, who was at that period the Superintendent of the Settlement and who was also a friend of the plaintiff.

Sometime about May 1945 Lee was in pressing need of funds and asked Dr. Che Lah to raise a loan for him, to be repaid, after Liberation, in British or Allied currency.

At that time the local population were all living more or less under the shadow of the Japanese Gestapo and had only irregular and surreptitious access to world news but they knew that the war was developing favourably to the Allies and they foresaw Liberation within a year or less though they could not possibly foresee whether Malaya would be relieved by British forces or by a Joint Allied force. Still less could they foresee what the new financial arrangements would be. There might well be a new Joint Allied Currency if several of the enemy-occupied countries were recovered simultaneously or the Indian Rupee might be introduced in order to provide currency for immediate needs. Anything might happen. Only one thing in this field was certain. The Japanese "printing press" currency was depreciating more and more rapidly, and when the country was liberated it would become valueless for all practical purposes, whether it were legally proscribed or not. It was in these circumstances that Dr. Che Lah, acting in a friendly way as agent for both parties, asked the plaintiff to make an advance to Lee. The plaintiff handed to the Doctor $20,000 in Japanese notes and a blank printed form of I.O.U. The doctor handed these to Lee who signed the I.O.U. for $20,000. He also wrote on the face of the document the words: — "In British or Allied Currency" and signed them separately.

Two or three weeks later a loan of $30,000 was made in the same way, except that on this occasion the plaintiff met Lee himself in the Leper Settlement. The I.O.U. was in exactly the same form.

Both I.O.Us. were antedated to 1944. This was done by Lee because he thought there might be additional danger to the plaintiff if by mischance the I.O.U. fell into the hands of the Japanese and they thus became aware that the plaintiff had had dealings with him after the date when he, Lee, had withdrawn to the jungle. From the Japanese point of view Lee was the equivalent of a bandit supply agent in the present emergency and he was "wanted". This precaution was almost useless because if the Japanese had even

suspected the plaintiff of being associated with Lee they would have visited him with their displeasure and the mere date would have been of no avail. In any event the antedating of the first I.O.U. was by Lee on his own initiative, not on any suggestion by the plaintiff, and it has no real significance, the true date being established, though not exactly, by the independent evidence of the doctor.

Malaya was liberated in August, 1945 and, as things then turned out, the Malayan dollar was re-established on the pre-war basis, equivalent to 2s. 4d. sterling. It was impossible for Lee to obtain any substantial funds until his estates had been rehabilitated and in April, 1946 he died. On 17th July, 1946, the plaintiff wrote to the executors claiming $50,000 but nothing was done for three years, presumably because of the Moratorium. The executors then denied liability and this action was started.

The plaintiff says that in consideration of the 50,000 Japanese dollars Lee promised to repay $50,000 in post-war money and he claims that sum.

The defendant says that the promise to repay in British or Allied currency is void for uncertainty; alternatively that if not void, the loan must be either re-valued under the Debtor and Creditor (Occupation Period) Ordinance or reduced under the Usurious Loans Enactment.

When I read the pleadings and documents the expression "British or Allied Currency" seemed very vague and uncertain but an I.O.U. is not a promissory note nor is it a written agreement, though it may be a sufficient note or memorandum in writing to prove the existence of an agreement. Ordinarily, an I.O.U. is merely a written acknowledgment of an existing liability but it may be evidence from which an undertaking to pay will be implied.

The case proceeded accordingly and the plaintiff gave evidence that Lee promised to pay in British or Allied currency according to whether the British or an Ally re-occupied Malaya.

When this was mentioned for the second time and the Court drew attention to it Counsel for the defendant formally objected but he did not cite any authority or raise any argument. (Later it became clear that he was relying on the authorities relating to uncertain terms in contracts and had never considered the point in relation to the Evidence Ordinance).

I referred to section 98 which provides that evidence may be given to shew the meaning of words used in a peculiar sense, and on that I admitted the evidence. I did not, at that stage, accept the evidence because I had various doubts but, whether Counsel on either side realised it or not, my ruling that it was admissible was of cardinal importance to the action. If that evidence had been excluded I do not think the plaintiff could have made out a case for the defendant to answer.

Counsel for the plaintiff contended that the bargain was to borrow $50,000 Japanese and to repay 50,000 post-war dollars if the pre-war currency was restored or, if the liberating power installed a new currency, then the equivalent in that currency of 50,000 pre-war Malayan dollars. He agreed that the plaintiff did not expect fifty thousand of the new unit whatever that might be. If the new currency had been linked to sterling at 4/8 he would have claimed 25,000 new dollars. If we had gone on to the rupee he would have claimed the equivalent in rupees of 50,000 pre-war dollars. In short, the plaintiff alleges a promise to pay 50,000 pre-war Malayan dollars, or their equivalent. This contention may seem plausible at first glance but I do not think it is supported by either the documentary or the oral evidence.

To deal first with the document, it is clear that when the plaintiff wrote I.O.U. meaning "I owe to you", he used "owe" in its popular, non-technical sense; he meant "I admit a liability." He did not mean: — "I admit that there is a debt of $50,000 now owing and presently payable to you." It was of the essence of the bargain that the plaintiff should not demand, and that Lee should not seek to make, repayment of the loan in Japanese money. There was complete mutuality on this point and it was specially important to the plaintiff because the currency was in fact falling and there was no hope of recovery. If the loan had been expressed in Japanese dollars without qualification, Lee could have bought a few bags of rice with the $50,000 and, after a few weeks, sold half of them for $50,000 and paid off the loan.

The I.O.U. therefore meant: — "I acknowledge having received from you a loan of $50,000, Japanese currency, the loan to be repaid in Liberation currency whatever that may turn out to be." The document does not import a promise to pay 50,000 of any unit. The words and figures "fifty thousand" refer to the Japanese notes handed over and to nothing else.

The oral evidence does not carry the matter any further. The plaintiff does not say that when they met on the occasion of the second loan Lee promised to pay the equivalent of 50,000 pre-war dollars and I

do not see how such a promise can be implied. At that date Japanese money had already fallen very heavily. Lee was a man of property and a good risk. It was confidently expected that he would have ample funds and though no definite date for repayment could be fixed it was not expected to be more than a year or so ahead. The bargain for which the plaintiff now contends would have been highly improvident in the circumstances proved. Strong and clear evidence would be needed to show that such a bargain was made and I can find no evidence to that effect.

I am satisfied that when Lee first proposed the stipulation for repayment in British or Allied currency, he contemplated some form of re-valuation. Had the first transaction stood alone there might have been some doubt as to whether the plaintiff understood the matter in the same way but the second transaction was in identical terms, after a direct conversation between the principals. This establishes *consensus ad idem.*

There was no uncertainty. *Certum est quod certum reddi potest.* "The terms must be capable of being made definite without further agreement of the parties" as Lord Wright said in *Scammell v. Ouston*[1] This requirement is satisfied here because the currency of repayment was to be determined by an event quite beyond the control of the parties. It was never open to the borrower to choose in which of all the various British and Allied currencies he would repay.

Although the Usurious Loans Enactment was pleaded, no argument on it was advanced. Had the contract been for repayment of 50,000 post-war dollars it might have been necessary to consider that plea but on my view of the matter it does not arise.

The only remaining question is how to ascertain the amount to be repaid. On this point I have considerable sympathy with both parties. The defendants, as trustees, could not pay out so large a sum as $50,000 unless the liability was clear. The plaintiff naturally expected to recover his money — it was a real loan, and intended to be an enforceable business transaction. It is true that in 1945 the purchasing power of Japanese money was low and trade was severely restricted. Dr. Che Lah was unable to give any idea as to the value of the loan by reference to the price at that time of rice or other commodities but I have no doubt that it had a substantial value.

Also, I do not think it unnatural for the plaintiff, as a layman, to suppose that under the Debtor and Creditor Ordinance, when it eventually became law, he had become entitled to $50,000. The thing appeared to have turned out better than it might have done and he sought to take the advantage. He was wrong but he was not necessarily insincere.

At one stage the defendant took the view that the contract meant that Lee could repay 50,000 units of the currency of any British or Allied country, at his option, and they offered to pay $50,000 Chinese converted to Malayan currency at the rate of 17th July, 1946 but no estimate of the cash value of this offer was given. In my view the agreement never had that meaning but if it had, it was too uncertain to be enforceable. Once the evidence of special meaning had been accepted, that argument was ruled out. Nevertheless I endeavoured to encourage the proposed settlement because I thought it would be beneficial to both sides; it would have solved the otherwise difficult problem of re-valuation.

There appear to be only two possibilities; either the loan must be re-valued according to the scale provided by the Debtor and Creditor (Occupation Period) Ordinance or there must be an enquiry as to the value of the money lent. It seems to me reasonably practicable to ascertain the prices of a few commodities such as rice and soap, and that these prices would give a fair measure of the value of the money to either party at the material times. The present value of similar goods will give a measure of the sum to be repaid.

If the loan were re-valued according to the Debtor-Creditor scale it would yield between $900 and $1,000. I seriously considered giving judgment for the plaintiff for that amount but decided, not without some doubt, that it was not the correct course.

This loan was, from its inception, expressed not to be repayable in occupation currency and therefore the Ordinance does not apply to it. It seemed to me anomalous to apply the statutory scale to a transaction expressly excluded from the operation of the statute. Either the Ordinance applies to the whole transaction or it does not apply at all. Against this it could perhaps be said that "equity follows the law" but I am enforcing a legal contract, not giving equitable relief. I did consider whether, although the scale does not apply by operation of law, it should be applied by analogy, but I very gravely doubt whether it would give a reasonable approximation to justice in this case. I believe the first draft of the Debtor-Creditor scale was founded on the trend of commodity prices but it was much debated both in and out of the Legislature and revised on several occasions. The Ordinance as a whole and the scale in particular were expressly designed to re-value transactions with and between

banks as well as transactions in actual currency. Financial transactions are expressed in terms of currency but they do not represent actual notes. The amount of currency in circulation in any given month is less than eleven per cent of the aggregate of the financial transactions passing in that month. It is true that the real value of banking transactions is affected by the trend of commodity values but other factors are operative. For the purposes of this legislation it was a practical necessity to have one scale for all transactions but it does not necessarily follow that the scale is a just one for transactions outside the Ordinance. It was founded partly on the trend of commodity prices and partly on these other factors and it is probable that political considerations also were taken into account.

I fully appreciate that there was no stipulation in this contract that the money was to be used for buying commodities. Lee was at liberty to pay off any overdraft he might have with one of the operating banks, or any other debt, if he so wished. Therefore a re-valuation based solely on commodity prices at the date of the loan may not be even theoretically correct, quite apart from the obvious practical difficulty of selecting a range of commodities and ascertaining their average local prices during the two months in question. Nevertheless I am of opinion that as the scale is not legally applicable and probably not a close approximation to the relevant truth, the only safe course is to direct an enquiry as to the value of the Japanese money at the time that it was lent and I do not think this can be estimated except with reference to commodity prices at that time.

Such an enquiry would have been necessary in a very large number of cases, had there been no scale, and since the scale is inapplicable it seems to me proper in this slightly unusual case.

It is possible that the result of the enquiry will be to yield a smaller sum than $900 but I think it more probable that it will yield a somewhat larger sum. As the difference is in any event likely to be small in proportion to the costs of the enquiry, the parties would be well advised to see first what evidence they can adduce as to relevant prices and then to consider whether a compromise could even now be arranged. Failing a settlement the enquiry must proceed and the parties, or the Registrar, may if necessary, apply in Chambers for directions.

I reserved the question of costs for consideration after the result of the enquiry is known.

Order accordingly.

RAUF BIN HAJI AHMAD
v.
PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) May 18 and 20, 1950]

[Perak — Criminal Appeal No. 13 of 1950]

Penal Code, s. 161 — Taking illegal gratification —Admissibility of evidence tending to show accused is guilty of criminal acts other than those charged — Evidence of accomplices.

In this case the appellant appealed against his conviction of offences of taking gratifications as a public servant in contravention of section 161 of the Penal Code. It was alleged that the appellant had obtained the sums of money from persons ($100.00 from one person and $200.00 from another person) who had been appointed under provision contracts to supply goods on credit to special constables, and it was alleged that the moneys were paid as illegal gratifications. At the trial evidence was given of the supply of goods and payments of other sums of money to the appellant by the persons concerned at the time when they were enjoying the benefit of the provision contract. The appellant in his defence admitted the receipt of the money and the goods but said that as to the sums of money they were loans which he intended to repay and as to the goods that he had always intended to pay for them.

Held, (1) that the evidence of the receipt of the goods and of the other sums of moneys, other than the two sums contained in the charges, were admissible as tending to show that the two payments were corrupt and as tending to rebut the defence open to the appellant; (2) that the learned trial Judge in this case realised the danger of convicting on the uncorroborated evidence of accomplices and on a review of the evidence, there was nothing to show that his decision to convict was unreasonable and one that cannot be supported from the evidence, and therefore the appeals must be dismissed.

Cases referred to :—

(1) *Noor Mohamed v. Rex* (1949) 1 All E.R. 365.
(2) *Abrahamovitch's case* 112 L.T. 480.
(3) *Clayton-Wright's case* 33 Cr. App. R. 28.
(4) *Rex v. Kritz* 33 Cr. App. R. 169.
(5) *Makin v. Attorney-General for New South Wales* (1894) A.C. 57 at p. 65.
(6) *Rex v. Bond* (1906) 2 K.B. 389 at p. 397.
(7) *R. v. Geering* 18 L.J. (M.C.) 215.
(8) *R. v. Armstrong* (1922) 2 K.B. 555.
(9) *Shellaker's case* 9 Cr. App. R. 240.
(10) *Trowell v. The Public Prosecutor* (1941) F.M.S.L.R. 77.
(11) *Mohamed Yatin bin Abu Bakar v. Public Prosecutor* (1950) M.L.J. 57; 1 M.L.R. 7.
(12) *Lawson v. Public Prosecutor* (1941) F.M.S.L.R. 156 at. p. 161.
(13) *R. v. Baskerville* (1916) 2 K.B. 658.
(14) *Public Prosecutor v. Haji Ismail* (1939) F.M.S.L.R. 134 at p. 141.